

November 16, 2001

D.T.E. 00-82 (Phase II)

Petition of Boston Edison Company d/b/a NSTAR Electric for approval of its 2000 Transition Charge True-Up, pursuant to G.L. c.164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved by the Department of Telecommunications and Energy in D.P.U./D.T.E. 96-23.

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I. INTRODUCTION

On November 2, 2000, pursuant to G.L. c.164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved in Boston Edison Company, D.P.U./D.T.E. 96-23 (1998), Boston Edison Company d/b/a NSTAR Electric (“BECo” or “Company”) filed with the Department of Telecommunications and Energy (“Department”) its 2000 reconciliation filing that included reconciliation of transition, transmission, standard offer service, and default service costs and revenues, and proposed updated charges and tariffs to be effective January 1, 2001 (“Reconciliation Filing”).¹ On December 5, 2000, the Attorney General of the Commonwealth filed comments on the Reconciliation Filing. On December 22, 2000, the Department allowed BECo’s tariffs to take effect on January 1, 2001, subject to further investigation and reconciliation. Boston Edison Company, D.T.E. 00-82 (2000).

The Department conducted a public hearing and procedural conference on February 6, 2001. The Attorney General filed notice of intervention pursuant to G.L. c. 12, § 21E. The Commonwealth of Massachusetts Division of Energy Resources (“DOER”) was granted permission to participate as a limited participant in this proceeding.

On June 7, 2001, the Department granted the Company’s motions to stay evidentiary hearings and to further supplement its filing in order for the Company to comply with the

¹ BECo made a supplemental filing on April 13, 2001.

Department's June 1, 2001 Order, Boston Edison Company, D.T.E. 99-107-A (Phase II) (2001).² On July 10, 2001, BECo filed supplemental prefiled testimony and exhibits that incorporated changes required by D.T.E. 99-107-A (Phase II). On August 24, 2001 the Company and Attorney General were granted their request to postpone hearings³ to allow the Parties more time to negotiate a possible settlement. On October 19, 2001, the Company and Attorney General (together, "Parties") filed: (1) a Joint Motion for Approval of Settlement Agreement ("Joint Motion"); and (2) a Settlement Agreement ("Settlement") that purported to resolve all issues related to this proceeding.

The Joint Motion requests approval of the Settlement on or before November 16, 2001.⁴ On October 30, 2001, pursuant to 220 C.M.R. § 1.10(8), the Department conducted a technical conference to discuss the Settlement.⁵ No comments were filed on the Settlement.

² In D.T.E. 99-107-A (Phase II), BECo's 1999 reconciliation filing, the Department ordered BECo to make certain adjustments to its transition, standard offer and default service reconciliations in regards to its treatment of wholesale costs and revenues.

³ Hearings had been scheduled for August 28-30, 2001. Two further joint requests for postponement of hearings were granted on September 20, and October 3, 2001, respectively.

⁴ The Joint Motion also requests that the Department enter into evidence: (1) 36 Company exhibits; (2) four Settlement exhibits; (3) 65 Company responses to Department information requests; and (4) 42 Company responses to Attorney General information requests (Settlement, App. A). The Department grants this request.

⁵ On October 30, 2001, the Department also moved into the record of this proceeding BECo's October 29, 2001 responses to IR-DTE-6-1 through IR-DTE-6-4.

II. THE SETTLEMENT

The Settlement states that it resolves all issues relating to the reconciliation of costs and revenues for the years 1998, 1999, and 2000 (“reconciliation period”) (Settlement at 2, §§ 1.7, 2.1, citing Exhs. BEC-BKR-1 (Settlement) and BEC-BKR-2 (Settlement); Joint Motion at 1).

In its initial filing, the Company had proposed to increase the transition charge by \$903,616 to recover lost base distribution revenues (Exh. BEC-BKR-2).⁶ The Settlement stipulates that it does not include the Distribution Revenue Loss Adjustment that the Company first proposed (Settlement at 3, § 2.2) The Distribution Revenue Loss Adjustment now consists of \$684,578 in lost base distribution revenues that occurred from September 1, 1999 through December 31, 1999 and \$219,038 in lost base distribution revenues that occurred during calendar year 2000 (for a total of \$903,616) (Settlement at 3, § 2.2; Exh. BEC-BKR-2, at 11).

The Settlement states that, in addition to the removal of the Distribution Revenue Loss Adjustment described above, the Company shall reduce the total level of Transition Charge costs for the reconciliation period by \$2.0 million (id. at § 2.3, citing Exh. BEC-BKR-1 (Settlement)). The Parties state that this provision resolves all disputes about the recovery of Transition Charge costs for the reconciliation period (id.).

The Settlement revises the existing method of reconciling Transition Charge revenues (Settlement at 3, § 2.4). The Settlement states that the revised method shall be performed in

⁶ The Company states that the Distribution Revenue Loss Adjustment was intended to recover what the Company claimed to be lost base distribution revenues BECo incurred starting September 1, 1999 when it implemented a 15 percent rate reduction for all customers pursuant to the Restructuring Act, Chapter 164 of the Acts of 1997 (Exh. BEC-BKR at 28).

accordance with the Company's proposal as set forth in the Company's Reconciliation Filing, provided that each year beginning January 1, 2002, the Company shall provide for an adjustment to the Transition Charge for each rate class whose rates are designed to recover the full Transition Charge (id., citing Exh. BEC-BKR).⁷

The Settlement states that it changes the existing method of reconciling Transition Charge revenues to ensure that on a Company-wide basis, Transition Charge revenues will be fully reconciled with actual revenues received (id. at 3-4, §§ 2.4, 2.5). The Settlement stipulates that the Company shall reconcile its Transition Charge revenues on the basis of actual revenues received for kilowatthours ("KWH") delivered, rather than on the basis of KWH delivered times a Company-average Transition Charge rate (id. at 3-4, § 2.4).⁸

The Settlement also states that it intends to provide a more precise accounting of Transition Charge revenues by taking into account rate-design differences among customer classes (id. at 4, § 2.5). Should a rate class' Transition Charge adjustment in a given year result in an over- or under- collection, the Settlement states that a compensating adjustment will

⁷ The existing method for reconciling transition charges is described in BECo's Restructuring Settlement at Attachment 3, "Formula for Calculating Access Charges."

⁸ The Settlement's method differs from the Company's current method of reconciling transition charges. The Company explains that the current method assumes that every KWH delivered collects the average or "theoretically" expected per-KWH Transition Charge approved by the Department (Exh. BEC-BKR at 9). BECo's current rate design collects transition costs for some customer classes through peak and off-peak KWH charges and through kilowatt demand charges. Consequently, as the load patterns deviate from the load patterns used to develop the current rates, so do the revenues from amounts the rates are designed to collect (id.).

be made to that class' Transition Charge in the following year in accordance with the method stated in Exhibit BEC-1 (Settlement) (id.).

Further, the Settlement states that in order to implement the reconciliation method agreed on in the Settlement, BECo shall submit a revision to its existing Transition Cost Adjustment Provision tariff (M.D.T.E. No. 845), Exhibit BEC-2 (Settlement) ("Revised Tariff"), with the Company's next reconciliation filing (id. at 4-5, § 2.6). Lastly, the Parties stipulate that this method is intended to be consistent with and substantially comply with the Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 ("Restructuring Act")⁹ and the Company's Restructuring Settlement approved in Boston Edison Company, D.P.U./D.T.E 96-23 (1998) ("Restructuring Settlement") (id. at 4, § 2.5, citing Restructuring Settlement at 25, 28-30, 49-50, §§ I.B.1.(c); I.B.2.(f); I.B.4; V.C.5).¹⁰

In addition, the Settlement states that, other than where expressly stated, the Settlement: (1) shall not constitute an admission by any party that any allegation or contention in this proceeding is true or false; and (2) shall not in any respect constitute a determination by the Department as to the merits of any issue raised during the proceedings (id. at 5, § 3.1). The Settlement also states that it establishes no principles and, except as to those issues resolved by approval of this Settlement, shall not foreclose any party from making any contention in any future proceedings (id. at § 3.2).

⁹ St. 1997, c. 164, entitled "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein."

¹⁰ Pursuant to 220 C.M.R. § 1.10(3), the Department incorporates by reference into the record of this proceeding the Restructuring Settlement.

The Settlement provides that the content of Settlement negotiations (including work papers and documents produced in connection with the Settlement) shall be confidential (id. at § 3.3). The Settlement also states that all offers of settlement are without prejudice to the position of any party or participant presenting such offer (id.). The Settlement provides that the content of Settlement negotiations are not to be used in any manner with these or other proceedings involving Parties to this Settlement (id.).

Should the Department not approve the Settlement in its entirety by November 16, 2001, the Settlement provides that it shall be deemed withdrawn and not constitute any part of the record in this proceeding or be used for any other purpose (id. at 6, § 3.5).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with applicable law, including relevant provisions of the Restructuring Act, Department precedent, and the public interest. Boston Edison Company, D.P.U./D.T.E. 96-23, at 13 (1998); Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I) (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

IV. ANALYSIS AND FINDINGS

In Cambridge Electric Light Company and Commonwealth Electric Company, D.T.E. 99-90-C at 56 (2001), the Department rejected the proposals of Cambridge Electric Light Company (“Cambridge”) and Commonwealth Electric Company (“Commonwealth”) to recover lost base distribution revenues through their respective transition charges due to a reduction in their base distribution rates mandated by the Restructuring Act.¹¹ The Department stated that it did not explicitly direct Cambridge or Commonwealth to reduce their distribution rates to meet the 15 percent rate reduction requirement. Id. The Department found that any voluntary reduction in distribution revenues is not considered a transition cost permitted by G.L. c. 164, § 1G(b)(1). Id. The Department found that such voluntary reduction in distribution rates shall not be allowed to be recovered through the transition charge. Id. The Settlement’s removal of the Distribution Revenue Loss Adjustment from the Company’s transition charge is consistent with the Department’s directives and findings in D.T.E. 99-90-C.

In assessing the Settlement provision that reduces BECo’s transition charge costs by \$2 million for calendar year 2000, the Department must ensure that the proposed reduction is consistent with or substantially complies with the Restructuring Act, the Restructuring Settlement, applicable law and Department precedent. See Boston Edison Company,

¹¹ G. L. c. 164, § 1B(b), required each investor-owned electrical company to implement a 15 percent rate reduction for its customers for electricity consumption on and after September 1, 1999. On August 19, 1999, the Department issued a guidance letter to electric companies clarifying what is required to receive Department approval to implement the 15 percent rate reduction.

D.T.E. 98-111, at 4 (1999). We begin by noting that BECo's Restructuring Settlement provides that signatories to the Restructuring Settlement will informally resolve disputes regarding, among other things, the Company's transition charges (Restructuring Settlement at 52-53). Also, the Department has encouraged parties to meet and resolve issues related to BECo's reconciliation filings. Boston Edison Company, D.T.E. 99-107 (Phase II) at 11 (2000); Boston Edison Company, D.T.E. 98-111 at 34-35 (1999). Therefore, the Parties' efforts to settle the issue of transition charge costs are consistent with our directives.

In D.P.U./D.T.E. 96-23, the Department approved the Company's method for reconciling BECo's Transition Charge (Restructuring Settlement at 241-256, Att. 3). The Department notes that the Restructuring Settlement and the Restructuring Act provide for the full reconciliation of transition costs and revenues (Restructuring Settlement at 25, 28, 29-30, §§ I.B.1.(c), I.B.2(f), I.B.4). G.L. c. 164, §§ 1A, 1G. The revised method proposed in the Settlement is based on actual revenues received for KWH delivered and ensures that the actual Transition Charge revenues and costs are fully reconciled on a Company-wide basis. In addition, the Settlement method ensures uniform cost responsibility among rate classes because it reconciles, for each rate class, the actual Transition Charge revenues with the Transition Charge revenues that would have been collected using a Company- average Transition Charge rate. In contrast, the current method is less refined because it is based on the assumption that every KWH delivered collects the theoretically expected per-KWH Transition Charge (see n. 8, above).

The Department finds that the Settlement's reconciliation method results in just and reasonable rates and is in the public interest because the Company's customers pay no more and no less than the approved level of Transition Costs, and because the collection of the Transition Charge is uniformly apportioned among rate classes. In addition, the Department finds that the Settlement's method of reconciling transition charge revenues is consistent with the Restructuring Settlement. Moreover, the Settlement's method of reconciling transition charge revenues substantially complies with the Restructuring Act. Accordingly, we approve the Settlement's proposed revisions to the existing Transition Cost Adjustment Provision tariff (M.D.T.E. No. 845).

Upon review of the entire record in this proceeding, the Department finds that, on balance, the Settlement represents a reasonable resolution of the issues in this proceeding. Therefore, the Department approves the Settlement.¹²

¹² The Department disallows the Settlement's claim of evidentiary privilege set out at page 5, § 3.3. The claim is identical to the settlement provision the Department disallowed in Boston Edison Company, D.T.E. 99-107 (Phase II), at 11 n.12.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the Joint Motion to Approve an Offer of Settlement and Settlement Agreement, submitted by Boston Edison Company and the Attorney General on October 19, 2001, be and hereby is ALLOWED; and it is

FURTHER ORDERED: That Boston Edison Company follow all other directives in this Order.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).